



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 200506-0128]**

**RIN 0648-BJ55**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Regulatory Amendment 33**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement management measures described in Regulatory Amendment 33 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). If implemented, this proposed rule would remove the requirement that if the South Atlantic red snapper season (commercial or recreational) is projected to be 3 days or less, the respective season would not open for that fishing year. The purpose of this proposed rule is to improve access to South Atlantic red snapper, particularly for the recreational sector.

**DATES:** Written comments on the proposed rule must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments on the proposed rule, identified by "NOAA-NMFS-2020-0017," by either of the following methods:

- *Electronic submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/docket?D=NOAA-NMFS-2020-0017>, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Frank Helies, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments

(enter "N/A" in required fields if you wish to remain anonymous) .

Electronic copies of Regulatory Amendment 33 to the Snapper Grouper FMP (Regulatory Amendment 33) may be obtained from [www.regulations.gov](http://www.regulations.gov) or the Southeast Regional Office website at

<https://www.fisheries.noaa.gov/action/regulatory-amendment-33-red-snapper-fishing-seasons>. Regulatory Amendment 33 includes an environmental assessment, regulatory impact review, and Regulatory Flexibility Analysis (RFA) .

**FOR FURTHER INFORMATION CONTACT:** Frank Helies, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: [frank.helies@noaa.gov](mailto:frank.helies@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS and the Council manage the snapper-grouper fishery under the Snapper-Grouper FMP, which includes red snapper. The Snapper-Grouper FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) .

### **Background**

The harvest of red snapper from South Atlantic Federal waters was prohibited in 2010 through Amendment 17A to the Snapper Grouper FMP when the stock was determined to be

overfished and undergoing overfishing (75 FR 76874; December 9, 2010). In 2013, the Council developed a process for allowing limited harvest of red snapper through Amendment 28 to the Snapper-Grouper FMP (78 FR 44461; July 24, 2013). In 2018, the Council revised the commercial and recreational annual catch limits (ACLs) through Amendment 43 to the Snapper-Grouper FMP (83 FR 35428; July 26, 2018).

The commercial ACL is 124,815 lb (56,615 kg) round weight, and the commercial season begins on the second Monday in July each year. The commercial ACL is monitored during the season and the sector is closed when the ACL is reached or projected to be reached. The commercial fishing season was open for 60 days in 2017, 116 days in 2018, and 54 days in 2019.

The recreational ACL is 29,656 fish and the season begins on the second Friday in July, and the recreational season consists of weekends only (Friday, Saturday, and Sunday). The length of the recreational red snapper season is projected based on catch rate estimates from previous years, and the length of the projected fishing season is announced each year in the *Federal Register* before the start of the season.

For South Atlantic red snapper, NMFS annually projects the number of days that it would take for the commercial

and recreational sectors to reach their respective ACL. If NMFS projects the South Atlantic red snapper season (commercial or recreational) to be 3 days or less, the respective season would not open for that fishing year. Under both current and proposed regulations, the red snapper commercial and recreational seasons are projected and managed independently of each other; that is, harvest for one sector can occur without the other. NMFS notes that to date, there has not been a fishing year where one sector was allowed harvest of red snapper and the other was not. NMFS initially implemented the 3-day minimum season length provision in 2013 because the Council determined in Amendment 28 to the Snapper-Grouper FMP that a season of less than 4 days would not provide sufficient fishing opportunity to the public (78 FR 44461, July 24, 2013).

Recreational fishermen have expressed concern to the Council and NMFS that as the South Atlantic red snapper population recovers and catch rates improve, access to the red snapper resource could decline due to shortened fishing seasons. Specifically, as the red snapper population rebuilds, more fish are available for harvest and the South Atlantic red snapper recreational fishing season has generally experienced increased effort over the last 3 years, particularly off the east coast of Florida. Since

the recreational red snapper ACL has remained the same over recent years, fishing seasons in future years could get shorter despite the population rebuilding because the ACL would be met in less time due to the increased effort and increased availability of fish. The length of the red snapper recreational season has declined from 10 days in 2017, to 6 days in 2018, and to 5 days in 2019 as a result of the recreational ACL being projected to be reached sooner in each year. To better ensure recreational access to red snapper regardless of season length projections, the Council is proposing in Regulatory Amendment 33 to remove the 3-day minimum season length requirement. In addition, because the commercial season for red snapper has remained open for several months each year in recent years when harvest of red snapper was allowed, NMFS expects that the commercial season duration will not be impacted by this action.

#### **Management Measures Contained in this Proposed Rule**

This proposed rule would remove the requirement that if a red snapper season (commercial or recreational) is projected by NMFS to be 3 days or less, the respective fishing season will not open for that fishing year. If this provision is removed, red snapper harvest could be open for either commercial or recreational harvest for less than 4

days. Therefore, for the recreational sector specifically, this measure could allow for a fishing season to occur that otherwise would not be allowed under the existing regulations. NMFS expects this measure to increase the flexibility for recreational sector access to red snapper and enhance recreational fishing opportunities. NMFS notes that if this measure is implemented, the recreational ACL and accountability measures are not changing in this rule, and thus the measure is not expected to negatively impact the stock.

NMFS is analyzing the data and information on which the 2020 season length is based, and expects to announce information about the 2020 recreational and commercial fishing seasons soon.

**Management Measure in Regulatory Amendment 33 Not in this Proposed Rule**

Regulatory Amendment 33 also contains an action to consider changing the start date of the commercial season. Currently, unless otherwise specified, the commercial season is expected to open on the second Monday of July. The Council considered different commercial season start dates of May 1 and the second Monday of June in Regulatory Amendment 33. However, after receiving public input the Council decided not to modify the start date for the

commercial red snapper season. The Council determined that a commercial season start date change may not benefit the majority of stakeholders or provide overall biological benefits to the red snapper stock. The Council also determined that the change would likely create conflict between the commercial and recreational sectors as the red snapper season for the commercial sector would begin over a month before the recreational sector. Therefore, the current commercial season start date of the second Monday in July will remain in place.

#### **Classification**

Pursuant to section 304(b) (1) (A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with Regulatory Amendment 33, the Snapper-Grouper FMP, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This rule is expected to be an Executive Order 13771 deregulatory action.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed



rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

A description of the proposed rule and its purpose are contained at the beginning of the **SUPPLEMENTARY INFORMATION** section and in the **SUMMARY** section of the preamble. The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, this proposed rule does not implicate the Paperwork Reduction Act.

This proposed rule would remove the requirement that if the South Atlantic red snapper season (commercial or recreational) is projected to be 3 days or less, the respective season would not open for that fishing year. Because the RFA does not apply to recreational anglers, only the effects on commercial vessels were analyzed. Any impact to the profitability or competitiveness of charter vessel and headboat (for-hire) fishing businesses would be the result of changes in for-hire angler demand and would, therefore, be indirect in nature; the RFA does not consider indirect impacts.

The proposed action would directly affect federally permitted commercial fishermen fishing for South Atlantic red snapper. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

Any fishing vessel that harvests and sells any of the snapper-grouper species from the South Atlantic exclusive economic zone must have a valid South Atlantic commercial snapper-grouper permit, which is a limited access permit. As of January 23, 2020, there were 523 valid or renewable South Atlantic snapper-grouper unlimited permits and 104 valid or renewable 225-lb (102 kg) trip-limited permits. After a permit expires, it can be renewed or transferred up to 1 year after the date of expiration. In any given year, however, not all federally permitted commercial vessels harvest red snapper in the South Atlantic. From 2014 through 2018, an average of 113 federally permitted commercial vessel took 749 trips and landed approximately

49,000 lb (22,226 kg), gutted weight, of red snapper and 306,000 lb (138,799 kg), gutted weight, of other species co-harvested with red snapper. These vessels also took an average of 3,128 trips that landed approximately 1.94 million lb (879,968 kg), gutted weight, of various species but without red snapper. These vessels generated a total of approximately \$8.40 million (2018 dollars) of revenues from all species, of which approximately \$1.03 million (2018 dollars) were from red snapper. The 2014-2018 average revenue per vessel was approximately \$84,000 (2018 dollars). The average annual price per lb, gutted weight, of red snapper was \$5.49 (2018 dollars) and ranged from \$4.28 in 2015 to \$5.57 in 2018.

Based on the revenue information, all commercial vessels directly affected by the proposed action may be considered small entities. Because all directly affected entities are small entities, the issue of disproportional effects on small versus large entities does not arise.

The commercial harvest of red snapper is limited by the commercial ACL. If the projected red snapper season is determined to be more than 3 days, the economic effects of the proposed action would be the same as those of the *status quo*. If the projected red snapper fishing season is 3 days or less, the proposed action would allow the

commercial sector to generate some revenues where otherwise the season may be forgone based on a projected shortened season. In either scenario, the proposed action is expected to not reduce the revenues and profits of directly affected small entities.

The information provided above supports a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. Because this proposed rule, if implemented, is not expected to have a significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Red snapper, Seasons, South Atlantic.

Dated: May 7, 2020.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND  
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

**§ 622.183 [Amended]**

2. In § 622.183, remove paragraph (b)(5)(iii).

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